

SUMMARY ANALYSIS OF AMENDED BILL

Revenue & Taxation
 Author: Committee Analyst: Anne Mazur Bill Number: AB 1746
 Related Bills: See Prior Analysis Telephone: 845-5404 Amended Date: May 29, 2007
 Attorney: Daniel Biedler Sponsor: _____

SUBJECT: Broaden The Disallowance Of Deductions For Expenses Attributable To Illegal Activities

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED

X March 22, 2007, STILL APPLIES.

OTHER – See comments below.

SUMMARY

This Franchise Tax Board (FTB) sponsored bill would amend the Revenue and Taxation Code (R&TC) to broaden the list of crimes for which associated expenses would be disallowed as tax deductions.

SUMMARY OF AMENDMENTS

The May 29, 2007, amendments made the following changes:

- Added a member of the Revenue and Taxation Committee as a signatory to the bill.
- Added language to clarify that a prior, final determination by a court on the merits of the legality of a taxpayer's activities is required before deductions could be disallowed.

Except for a revised This Bill section, provided below, the remainder of the department's analysis of the bill as introduced March 22, 2007, still applies. The Background section of that analysis is provided below for convenience.

Board Position:

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Legislative Director

Date

Brian Putler

6/25/07

POSITION

Support.

On March 6, 2002, FTB voted 2-0, with the Director of Finance abstaining, to sponsor the language included in this bill.

BACKGROUND

In several recent tax evasion cases involving crimes against the elderly and insurance fraud, FTB's investigating Special Agent was required to allow expense deductions attributable to the illegal activity in computing taxable income because these crimes are not specifically included in the deduction disallowance provisions in the current statute. The Deputy District Attorneys prosecuting these cases have expressed frustration and concern regarding the limited nature of the disallowance provisions. Because particular crimes are not specified, prosecutors complain their ability to charge and penalize defendants fully is compromised, and the opportunity exists for the defendant's counsel to challenge the validity of FTB's tax liability computations.

ANALYSIS

THIS BILL

This bill would amend current law to deny a deduction for expenses, including costs of goods sold, attributable to income from any criminal activity punishable under the Penal Code and specified sections of the Health and Safety Code relating to drug trafficking and the Insurance Code relating to insurance fraud.

This bill would also require a prior, final California court determination on the merits of the legality of the taxpayer's activities to deny any deductions for expenses. This requirement is consistent with the department's practice to deny such deductions under existing law. Currently, the department disallows deductions attributable to illegal activities only where there has been a criminal conviction or a determination by a court of the additional tax liability related to illegal activity.

LEGISLATIVE STAFF CONTACT

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